

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

IN RE:) Case No. 1:09-bk-07161-RNO
) Chapter 7
)
THREE ARROWS ENTERPRISES,) Bankruptcy Courtroom No. 1
INC. d/b/a BLACK TIE MOTOR CAR,) Ronald Reagan Federal Building
) 228 Walnut Street
) Harrisburg, PA 17101
Debtor.)
) July 22, 2010
) 10:52 A.M.

TRANSCRIPT OF MOTION TO IMPOSE AUTOMATIC STAY FILED BY
SUSQUEHANNA BANK (DOCKET 237); ANSWER (243). JOINDER MOTION
FILED BY TRUSTEE (DOCKET 277).
BEFORE HONORABLE ROBERT N. OPEL, II
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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By: LAWRENCE G. FRANK, ESQ.
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1 THE COURT: 75, Three Arrows Enterprises, Inc.

2 MR. BRAVERMAN: Good morning, Your Honor. David
3 Braverman on behalf of the Reinhart parties.

4 THE COURT: Good morning.

5 MR. BRAVERMAN: Good morning, sir.

6 MR. HINCHMAN: Bill Hinchman for Susquehanna Bank
7 from Klehr Harrison.

8 MR. CORRELL: Frank Correll on behalf of Susquehanna
9 Bank.

10 THE COURT: I just want to say I don't care where you
11 stand, but it is important you be near a microphone when you
12 speak otherwise we won't record this, Mr. Hinchman and -- some
13 counsel prefer to be seated, some prefer standing, as long as
14 it's near a microphone, I don't have any preference.

15 MR. FRANK: Lawrence Frank, I'm the trustee. I've
16 joined in the motion of Susquehanna Bank, and I'm going to try
17 to stay out of everybody's way unless I'm needed later on.

18 MR. HINCHMAN: And if -- Your Honor, if you don't
19 mind, I will sit at the table only because I have some exhibits
20 that I need to get to.

21 THE COURT: Surely.

22 MR. HINCHMAN: Thank you.

23 MR. BRAVERMAN: Your Honor, before we present
24 exhibits to the Court, I don't know what else they have in
25 mind. I would suggest to Your Honor that this is a matter that

1 is readily resolvable as a matter of law on the basis of the
2 pleadings that have been filed.

3 The complaint that we filed in the Delaware County
4 State Court action is of record in this matter. Attached to
5 that are all of the mortgages and all of the promissory notes.

6 And what this matter boils down to, very simply, is
7 that nondebtors, and there are seven of them, sued a nondebtor
8 bank, Susquehanna Bank, in State Court.

9 In that State Court action, we allege direct harm to
10 the seven nondebtor parties arising out of loans made directly
11 to those seven nondebtor parties, secured by property owned
12 exclusively by those seven nondebtor parties. And that the
13 debtor has absolutely no interest in the loans, and no interest
14 in the property that secures the loans.

15 We have an action in Delaware County State Court.
16 They filed preliminary objections. In those preliminary
17 objections, they raise the identical issues that they raised
18 before this Court, among others. The Delaware County State
19 Court denied that motion. That is now collateral estoppel and
20 they are collaterally estopped from appearing before the Court
21 today, even though I understand and respect the fact that Your
22 Honor, and Your Honor alone, is the person and entity that
23 decides what is or is not property of the estate; we candidly
24 acknowledge that.

25 But this issue has already been raised. It's so

1 clear on the face of the documentation that there is really no
2 reason for there to be evidence, or anything other than
3 argument of counsel, which I welcome them to make. Because the
4 bottom line is they have now confess judgment against these
5 nondebtor parties arising out of the very loans that are the
6 subject of the prior pending action. They would seek to deny
7 my clients due process of law to raise any issue with respect
8 to the actions that they have brought.

9 THE COURT: Well, let me just interject. Mr.
10 Hinchman, when you said you have some exhibits, are you going
11 to -- do you intend to offer testimony in this matter?

12 MR. HINCHMAN: No, Your Honor. And I could cut to
13 the chase here. The only additional exhibits I have is that
14 Your Honor --

15 THE COURT: Can you just stand a little closer to the
16 microphone?

17 MR. HINCHMAN: Okay.

18 THE COURT: Thank you very much.

19 MR. HINCHMAN: Your Honor, the only additional
20 exhibits that I have is that with the motion, we filed a copy
21 of the complaint. Your Honor doesn't have the benefit of
22 having the attachments to the complaint which, as you can tell,
23 are extremely voluminous, and opposing counsel made reference
24 to them.

25 I think it would be good for the Court to have those.

1 I don't expect that there would be an objection to that.

2 MR. BRAVERMAN: None whatsoever, Your Honor. I'd be
3 delighted for Your Honor to see those things.

4 THE COURT: Very well.

5 MR. HINCHMAN: And there are a couple of other
6 documents, all of which I don't think Mr. Braverman would
7 object to. Again, in order to just educate the Court as to the
8 Delaware County action. And I did mention this to Mr.
9 Braverman's associate yesterday, so I don't mean to catch you
10 off guard, sir.

11 MR. BRAVERMAN: Well, I was in Atlanta yesterday --

12 MR. HINCHMAN: If you haven't had a chance --

13 MR. BRAVERMAN: -- so nothing got mentioned to me.

14 (Laughter)

15 MR. HINCHMAN: And that's what I said, I didn't mean
16 to catch you off guard if you haven't spoken to him.

17 MR. BRAVERMAN: That's okay.

18 MR. HINCHMAN: So, sir, the other documents, I would
19 mark the complaint with its attachments as Susquehanna Exhibit
20 1.

21 Susquehanna Exhibit 2 is the answer and new matter
22 that was filed to that complaint. Again, I don't think Mr.
23 Braverman would have an objection to that.

24 MR. BRAVERMAN: Not at all.

25 MR. HINCHMAN: Here's a copy.

1 MR. BRAVERMAN: Keep it. Keep it, I don't need more
2 paper. Thanks.

3 THE COURT: We're at the age where more paper is not
4 always desired.

5 MR. BRAVERMAN: It's not a good thing.

6 THE COURT: I understand.

7 MR. HINCHMAN: It also means you have to carry it
8 back to your car, which can be difficult.

9 The third document, Your Honor, is the plaintiff's
10 discovery request in the Delaware County action, which is
11 Exhibit 3. Again, I can't imagine that there's any objection
12 to that.

13 MR. BRAVERMAN: I don't think that's relevant. It
14 does not shed any light whatsoever upon whether or not these
15 claims are property of the estate or not.

16 MR. HINCHMAN: Well --

17 MR. BRAVERMAN: If Mr. Hinchman is trying to argue
18 through the back door that there are common facts because all
19 the loans were cross collateralized and cross defaulted, and
20 the original default arose out of Susquehanna Bank's fraudulent
21 and negligent --

22 THE COURT: Well, let me throw a change up at both of
23 you. Because, to be honest, I -- my understanding of the
24 automatic stay under 362(a) is that generally, it's an action
25 against the debtor or action against the debtor's property.

1 It seems to me the strongest argument, I guess, that
2 Susquehanna Bank has here is that this cause of action, the
3 four-count complaint that was filed in the Delaware County
4 Court of Common Pleas is somehow property of the estate. I'm
5 not -- I don't have -- I don't think I need to make a finding
6 on that.

7 But hypothetically if I did say it was property of
8 the estate, there's nothing generally that stops a debtor from
9 going out and prosecuting a claim. It's not -- so, when you
10 say you're seeking to impose the automatic stay, I have to say
11 that I'm having great difficulty accepting the premise.

12 I am familiar with a lot of cases where -- I think we
13 would all agree with this premise. That the automatic stay is
14 not something that I would impose normally as a court. I don't
15 enter an order; it's automatic, right? It happens when an
16 order for relief is entered.

17 There are cases such as Wedgewood Realty where the
18 automatic stay is in place, a movant files a motion for relief
19 from stay, unfortunately clerical errors are made, the relief
20 from stay hearing was not held within 30 days. And so the stay
21 terminated because of the noncompliance with 362(d) time lines.

22 And I understand in those cases, one might move to
23 reimpose that automatic stay. I have difficulty with your
24 motion, Mr. Hinchman, that it appears to reimpose, what is in
25 my mind, a stay that never existed.

1 And so I really think of this as an injunctive
2 request. And that's a pretty high standard, as I understand
3 the law in the Third Circuit: immediate and irreparable harm;
4 balance the harm between the movant and nonmovant; any affect
5 on the public interest, and there's probably a fourth factor
6 that isn't coming to mind.

7 But at base, isn't Mr. Braverman correct that neither
8 Three Arrows nor Autohaus are named parties in the Delaware
9 County action at this point?

10 MR. HINCHMAN: From a pure form perspective, yes,
11 Your Honor.

12 But I would suggest, Your Honor, that that's really
13 just the result of creative pleading.

14 The fact of the matter is, Your Honor, that -- and I
15 only have two more exhibits that we can deal with later. But
16 from an argument perspective, it's absolutely abundantly clear
17 that on the debtor's schedules and statements, that Mr.
18 Reinhart, the same individual that controls the debtors, and
19 controls all of these other entities, represented on his
20 schedules and statements before Your Honor that an asset of
21 this estate was the claims against Susquehanna related to the
22 administration of the floor plan loans.

23 Now, if you fast forward and look at the Delaware
24 County action, the declaratory relief that these other -- the
25 Reinhart controlled entities is seeking includes a

1 determination -- a request for the Delaware County court to
2 determine that the floor plan loans, the loans in which the
3 debtors entered into, the default provisions are rendered
4 meaningless.

5 THE COURT: But even if that's true, why would I, as
6 a bankruptcy judge, want to stay an action against -- I hate to
7 say a solvent defendant -- but against Susquehanna Bank. I
8 don't see the adversity to the debtor or the estate.

9 Now, Mr. Frank is the Chapter 7 trustee. He has, of
10 course, a lot of options if -- if, and I'm not -- please I
11 don't want this to be any law of the case. I'm not making any
12 findings -- and I said it last time on the motion to compel
13 discovery -- that I don't think it is proper for me to make a
14 finding as to whether or not this cause of action of property
15 of the estate at this juncture. I believe in judicial
16 restraint, and I'll decide issues when they're necessary to
17 dispose of the action.

18 But if it is property of the estate, wouldn't it then
19 be for the trustee to say, well, maybe I want to intervene in
20 the Susquehanna -- pardon me -- the Delaware County action,
21 perhaps I want to take some action against the Reinharts. But
22 I, again, I -- I just -- you know, you think of Atkins v.
23 Travelers, all the cases. Stays generally are not applicable
24 to actions brought by a debtor. So, if you're suggesting to me
25 -- and I'm not necessarily accepting this. But if you're

1 suggesting that the Reinhart group, if I can use that term,
2 somehow borrowed the estate's cause of action, it's nothing
3 that I would -- obviously I'm not going to condone that, or
4 encourage that. But if the debtor -- if I would not stay the
5 debtor from bringing the cause of action in the first instance,
6 I don't see, other than on an injunctive basis, how I would
7 stay someone borrowing the cause of action -- and, Mr.
8 Braverman, I fully appreciate -- I think you appreciate I'm
9 just talking hypothetically here. I appreciate your position
10 that these are -- the four-count complaint in Delaware, in your
11 mind, are the causes of actions of the Reinhart group solely,
12 and that -- and that's -- and I appreciate -- I think I -- at
13 one point in a younger day, I did some State Court work. So, I
14 appreciate what's it means for a demur to be overruled and that
15 the -- at least the Delaware County case has proceeded to the
16 answer stage, and assume some discovery has commenced. Am I
17 correct?

18 MR. BRAVERMAN: You are correct, Your Honor.
19 Although the bank has filed an application for certification
20 for an interlocutory appeal. But the case is proceeding along,
21 yes, sir.

22 And, by the way, I appreciate Your Honor's comments.
23 I understand that you're speaking hypothetically, saying "even
24 if what Mr. Hinchman is saying is correct, this is your
25 analysis."

1 I would add to the Court that -- you know, I had a
2 hard time getting my brain around the issue, as well. And Your
3 Honor really cut through it, and I do think that Your Honor is
4 correct. That effectively, they're asking a Federal Court to
5 enjoin a State Court action.

6 And in that respect, Your Honor, not only do the
7 ordinary injunction standards apply, which Your Honor
8 articulated, but there are more. If I recall from law school
9 days, there is a case called Dombrowski versus Fister, a
10 Supreme Court case, that deals specifically with State Court --
11 a Federal Court injunction of a State Court action. And only
12 in the most unusual and compelling circumstances is a Federal
13 Court to intervene in that regard.

14 THE COURT: And memory doesn't always serve at my
15 age, but I don't think you were here, Mr. Braverman, on the
16 motion to compel discovery. But I think I did suggest that I
17 try to -- I really believe in cooperative federalism, and I do
18 try to -- I try to give due deference to State Court
19 proceedings. It's been my experience that most state judges
20 return that courtesy.

21 I said last time that I don't -- this is not at the
22 level of Rooker-Feldman. But on the other hand, there is some
23 concern that by effectively -- you want to use the term
24 "automatic stay," I keep using the term "injunction/enjoin."

25 In any event, preventing that State Court action from

1 proceeding, I really need -- I need considerable authority and
2 persuasion for that proposition.

3 Mr. Hinchman?

4 MR. HINCHMAN: If I could speak, Your Honor. Thank
5 you.

6 I think that when you really dig down into the --
7 both the complaint, the causes of action, and what's really
8 occurred here is that through the process of creative pleading,
9 what Mr. Reinhart has attempted to do is to bring causes of
10 action in State Court in which only he, and these related
11 entities, will be beneficiaries if he were to recover.

12 And that the funds that otherwise would go to him
13 individually would be -- would not be subject to the Bankruptcy
14 Court's administration which, if you look at the gist of the
15 loans and the structure of the loans, there's -- a couple
16 representations, Your Honor, is that we need to wrestle with or
17 figure out a little bit more precisely because it's not really
18 accurate.

19 Most importantly, it's been argued that the debtor
20 has no relationship to the loans that are the subject of the
21 Delaware County action; that's not correct. Your Honor, if you
22 look at both the September 13th, 2006 loan, the debtor is a
23 guarantor of that loan. So, ultimately the determination of
24 the facts and circumstances brought by Mr. Reinhart and his
25 entities in the Delaware County action will have a direct

1 impact on whether or not the debtor in bankruptcy has a greater
2 liability or a lesser liability.

3 The asset -- that is an asset of the estate. That is
4 an issue for which the trustee should be involved.

5 And what has happened to date, because we haven't had
6 the benefit of being before Your Honor, is that somebody else,
7 not the debtor, has taken an asset, a cause of action, a claim
8 that, I agree, Your Honor, properly should be prosecuted by the
9 trustee.

10 THE COURT: Well, again, I wasn't making a finding,
11 Mr. Hinchman. I was talking hypothetically --

12 MR. HINCHMAN: Right.

13 THE COURT: -- that if it were an estate -- property
14 of the estate, if it were an estate cause of action, then it
15 would seem to me that Mr. Frank has alternatives as far as how
16 to address the situation.

17 But I want to be clear that I was talking only
18 hypothetically.

19 Mr. Frank?

20 MR. FRANK: Thank you, Your Honor.

21 Without seeming to stick my note in, and this is more
22 for information than anything else. When I first became
23 trustee in this case and talked to Mr. Chernicoff and read the
24 schedules, and had the meeting of creditors, I contacted Mr.
25 Braverman's office to see if he would agree to represent the

1 estate, as well as the plaintiffs in the Court of Common Pleas
2 action in Delaware County, and the response was no.

3 MR. BRAVERMAN: I have to tell you, Your Honor, I --

4 MR. FRANK: Well --

5 MR. BRAVERMAN: -- don't think you and I spoke about
6 it.

7 MR. FRANK: Well, it was Mr. Shectman then.

8 MR. BRAVERMAN: Well --

9 MR. FRANK: Yes.

10 MR. BRAVERMAN: -- if you want to remark that request
11 to me, because I don't know anything about that request, number
12 one.

13 And, number two, under certain circumstances, I might
14 consider it.

15 But the fact of the matter is is that the claims we
16 have asserted, and I'm sorry, Larry --

17 MR. FRANK: That's all right.

18 MR. BRAVERMAN: -- the claims that we have asserted
19 relate to loans that were made directly to the Reinhart
20 parties.

21 Now, there are certain common facts, and we
22 acknowledge that. But the existence of common facts does not
23 suddenly transmogrify these claims into property of the estate.

24 THE COURT: And if I --

25 MR. BRAVERMAN: So --

1 THE COURT: And I -- again, I have a lot of cases, so
2 I don't always remember everything. I thought that Delaware
3 County was a four-count complaint.

4 MR. BRAVERMAN: It is.

5 THE COURT: Negligence, breach of fiduciary duty,
6 gross negligence, and deepening insolvency, something along
7 those lines.

8 MR. FRANK: Right.

9 THE COURT: Am I --

10 MR. HINCHMAN: Correct, Your Honor.

11 MR. FRANK: Yeah, I --

12 THE COURT: If I'm mischaracterizing because I --
13 again, my memory is not always the greatest. I still am not
14 seeing -- I'm not seeing what I consider the necessary
15 adversity. The adversity against these debtors that -- isn't
16 -- is your recovery, Mr. Braverman, sought against Susquehanna
17 Bank in the Delaware County action?

18 MR. BRAVERMAN: Exclusively.

19 THE COURT: Are you seeking any damages, or any claim
20 against Three Arrows or Autohaus?

21 MR. BRAVERMAN: No, sir. None whatsoever.

22 THE COURT: Are you seeking any declaratory relief
23 concerning those parties?

24 MR. BRAVERMAN: No, sir.

25 MR. FRANK: Your Honor, if I may, what -- the

1 attorney that I normally use to handle litigation for me when
2 I'm trustee has been out of the office with heart problems.
3 And what I'm going to have to do now is either file a complaint
4 myself, or get somebody else in Harrisburg to assess whether a
5 valid cause of action exists. And if so, file this -- file an
6 adversary proceeding against Susquehanna Bank in the Bankruptcy
7 Court.

8 THE COURT: Well, now, you -- again, I think you
9 filed a motion -- basically a joinder in Susquehanna's --

10 MR. FRANK: Right.

11 THE COURT: -- motion to impose the automatic stay.

12 MR. FRANK: Right.

13 THE COURT: Are you changing that position at this
14 point?

15 MR. FRANK: For --

16 THE COURT: I'm not sure I'm entirely --

17 MR. FRANK: For purposes of today, I wanted to be on
18 board as suggesting to the Court that I believe this was an
19 estate cause of action.

20 But, yes, I am also -- assuming I can find somebody
21 that will agree that the case has merit -- file suit here in
22 the Bankruptcy Court against Susquehanna Bank, just on behalf
23 of the estate. And, again, this is just for purposes of
24 information.

25 Assuming that happens, then we'll have two causes of

1 action, one here in the Bankruptcy Court and one in the
2 Delaware County, same basic cause of action, different
3 plaintiffs. And then we'll have that issue to contend with at
4 that time.

5 THE COURT: And whether there are removal or remand
6 or --

7 MR. FRANK: Correct. I'm basically here to give the
8 Court the benefit of what I'm going, very likely, to do.

9 MR. HINCHMAN: Your Honor, if I could also be heard.
10 The point then being, and the reason why the request for an
11 automatic stay be imposed or reimposed, because I agree with
12 Your Honor that to some extent, the automatic stay is
13 automatically imposed.

14 And what has happened is some other party, i.e., Mr.
15 Reinhart and his related entities, has prematurely taken what -
16 - the asset, which is the cause of action by the trustee, and
17 has asserted it on their own behalf.

18 The problem, Your Honor, is that as each day goes by
19 in the Delaware County action, and the automatic stay could be
20 imposed on an interim basis for a limited period of time, that
21 facts are determined, and positions that are taken by Mr.
22 Reinhart. Mr. Reinhart, the same individual that controls the
23 debtors, which could very well prejudice the debtor in the
24 bankruptcy case.

25 And so Susquehanna's position is -- and for instance

1 -- and the reason why the discovery requests are important,
2 Your Honor, is that Mr. Braverman doesn't want to deal with
3 this. But when you look at it, three-quarters of the requests
4 are all directed towards Three Arrows, the debtors in this
5 bankruptcy case. "Give me everything and anything related to
6 your communications with the debtors." I have them here, we
7 can read them.

8 But it's very obvious that everything in Delaware
9 County is going to relate around the floor plan loans, and the
10 debtor's conduct, and Susquehanna's conduct with the debtor.
11 And as each day goes by, facts are being determined, positions
12 are being taken, which the trustee does not have the benefit of
13 being a part of it at this point.

14 THE COURT: But the trustee --

15 MR. BRAVERMAN: Your Honor --

16 THE COURT: The trustee clearly could ask to be
17 substituted as a party if he feels that he -- or he could --
18 real party in interest, or he could interplead. He has so many
19 options, I'm still not hearing why the State Court action
20 should be stayed, should be stopped in its tracks, Mr.
21 Hinchman.

22 MR. HINCHMAN: And, sir, what I would respectfully
23 suggest is that -- and even from the remarks made by the
24 trustee -- that it will require time on his part in order to
25 retain counsel, to analyze the cause of action, and then to

1 determine exactly what positions he takes in that cause of
2 action.

3 And what I am suggesting to Your Honor is that there
4 is no harm to Mr. Braverman waiting another 60 days or 90 days
5 for the trustee to determine exactly procedurally what they
6 seek to do.

7 But there is harm to the estate, which is the
8 positions taken by that litigation by an individual --

9 THE COURT: I know Mr. Braverman --

10 MR. HINCHMAN: -- who hasn't even been retained.

11 THE COURT: He's chomping at the bit.

12 MR. HINCHMAN: Well --

13 THE COURT: And let me -- look, sometimes I'm looking
14 for a middle ground, and I just -- you'd probably both be mad
15 at me. But it sounds like the trustee wants to talk to you. I
16 kind of heard that. And it sounded to me like he may have
17 spoken to someone else in your office, there may have not been
18 a full communication.

19 Would there be any interest in having this matter
20 continued for a brief time to allow for some dialogue? And I
21 guess I'll ask Mr. Braverman first.

22 MR. BRAVERMAN: With all due respect, Your Honor, and
23 I appreciate the effort to find middle ground, no way.

24 And here is why: These loans that are at issue in
25 this case were made directly to nondebtors. I represent those

1 seven nondebtor parties. In violation of the prior pending
2 action rules in the Commonwealth of Pennsylvania, this bank has
3 now confess judgment against those seven debtors on those ten
4 or whatever -- \$15 million worth of loans.

5 They're now proceeding to try to execute upon my
6 client to enforce those judgments. We're obviously moving to
7 open and strike them on a variety of different grounds. But
8 the fact of the matter is, Your Honor, is that Autohaus and
9 Three Arrows, in my humble judgment, have great causes of
10 action against Susquehanna Bank. They should bring them.

11 But whether they bring them or whether they don't
12 bring them, it has nothing to do with my clients' claims, or
13 the judgments that they have entered, unlawfully in our
14 opinion, against my clients. We have the due process rights to
15 pursue our claims and to defend them.

16 Now, with respect to the trustee's claims, nothing
17 that I do in the Delaware County State Court action will have
18 any impact whatsoever upon the trustee. It may have impact
19 upon Susquehanna Bank because it may find that Susquehanna Bank
20 did just what I said they did, all these bad things.

21 And to the extent the trustee can use any of those
22 facts that had been fully litigated, then the bank would be
23 collaterally estopped in favor of the trustee. So, the trustee
24 can only benefit from my action.

25 If the trustee wants to join my action, there's

1 nothing that can stop him from doing that. He can file a
2 motion with the Court, or he can file an adversary action here.
3 He can do whatever he wants.

4 He can also talk to me about whether or not somehow I
5 can do it without a conflict with my individual clients who are
6 not the debtor.

7 THE COURT: And it's rather mundane, but with respect
8 to the exhibits, Mr. Hinchman, I think it was Exhibit 3, said
9 that a number of the discovery requests were actually addressed
10 to Three Arrows and Autohaus.

11 MR. BRAVERMAN: Not correct, Your Honor.

12 THE COURT: I just wanted to give you an opportunity
13 to respond to that.

14 MR. BRAVERMAN: Absolutely false. They are not
15 addressed to anyone but Susquehanna Bank.

16 The facts -- the factual matters that we seek to
17 investigate with respect to some of those, indeed, relate to
18 the floor plan financing that the bank messed up. But they are
19 some common facts that exist. And it's not my fault that the
20 bank cross defaulted and cross collateralized those loans with
21 every other loan that's not in default, which is why we've
22 brought the Delaware County State action.

23 THE COURT: Time out. Have -- is it agreed that
24 Susquehanna Exhibit 1, the complaint and attachments, and
25 Susquehanna 2, the answer and new matter, can be admitted into

1 evidence?

2 MR. BRAVERMAN: Yes, Your Honor.

3 THE COURT: And --

4 MR. BRAVERMAN: And I have no objection to you
5 looking at 3, as well.

6 THE COURT: Can I just look at 3 --

7 MR. BRAVERMAN: Sure.

8 THE COURT: -- to determine whether or not -- whether
9 or not the relevancy objection has merit.

10 MR. BRAVERMAN: Yes, sir.

11 THE COURT: Do I have 3?

12 MR. HINCHMAN: Your Honor, if I could address three
13 points? I keep missing that microphone. Sorry to make your
14 job more difficult.

15 Sir, again, with regard to the characterization of
16 the loans not having anything to do with the debtors, we really
17 can't miss the point, sir, that -- and I appreciate Mr.
18 Braverman's enthusiasm about his case. We, of course,
19 respectfully have equal enthusiasm that there are no claims.

20 But the September 13th, 2006 loan, which is
21 attachment 1A to the complaint, sir, includes an Autohaus
22 guarantee of that debt.

23 The March 28th, 2007 loan, which is Exhibit 1C,
24 includes an Autohaus --

25 THE COURT: Let me just stop you there.

1 MR. HINCHMAN: Yes, sir.

2 THE COURT: That seems to me would mean that at some
3 point, Susquehanna Bank may have a claim back against the
4 debtors, but we -- I think we would -- would we agree that that
5 is subject to the automatic stay?

6 MR. HINCHMAN: You mean Susquehanna's claim, Your
7 Honor.

8 THE COURT: Yes, if -- if the corporations guaranteed
9 the principal's debt, all that's going to be is an unsecured
10 claim by Susquehanna Bank against the estates. But it would be
11 subject to the automatic stay, correct?

12 MR. HINCHMAN: Sir, I don't disagree with that. But
13 the import is, of course, that Mr. Braverman is asserting
14 claims, which will determine facts, which will conclude the
15 liability of the -- a debt that's guaranteed by the debtor. It
16 is a matter that is before the Delaware County Court.

17 MR. BRAVERMAN: It will not, Your Honor. It will
18 determine facts as to the parties to the action; Susquehanna
19 Bank. They want so desperately to avoid that determination of
20 facts that they have filed P.O.'s in the State Court action
21 raising the identical issues. Filed an application for
22 interlocutory appeal certification. Filed discovery in this
23 Court. And have now filed a motion to impose the automatic
24 stay.

25 THE COURT: Well, Mr. Hinchman said he had three

1 points, though.

2 MR. HINCHMAN: Yeah.

3 THE COURT: That was the first one.

4 MR. HINCHMAN That was the first, Your Honor.

5 THE COURT: Okay.

6 MR. HINCHMAN: I may lose track, I will try to keep
7 track here.

8 The second one is with regard to the discovery
9 request, Your Honor. Beginning at Item Number 14, and I'll be
10 precise in my characterization of these. Virtually every
11 discovery request from Item 14, which has A through J as
12 subparts, through Item 25 are all directed to the duties,
13 responsibilities, communications, and all -- everything having
14 to do with the floor plan loans, which is the same cause of
15 action that was represented by Mr. Reinhart on his schedules
16 and statements as being an asset of the bankruptcy estate.

17 THE COURT: Well --

18 MR. HINCHMAN: So, they're directed to --

19 THE COURT: Well, let me just -- for example, just --
20 let me read into the record plaintiff's request 16.

21 MR. HINCHMAN Um-hum.

22 THE COURT: "The bank's" -- and I assume that the
23 bank is a defined term, Susquehanna Bank -- "entire file
24 concerning Autohaus loan two, including any guarantees,
25 mortgages, security agreements, and/or other contracts executed

1 in connection with said loan, along with documents concerning
2 the collateral securing the loan.

3 "17, the bank's entire file concerning the Three
4 Arrows loan, including any guarantees, mortgages, security
5 agreements, and/or other contracts executed in connection with
6 said loan, along with documents concerning the collateral
7 securing the loan."

8 I take it that these are catch phrases. You know,
9 it's a way to refer to the Autohaus loan and the Three Arrows
10 loan. But to me, the discovery request, Mr. Hinchman, is
11 addressed to your client.

12 MR. HINCHMAN: Correct.

13 THE COURT: To Susquehanna Bank. And I thought you
14 were representing to me earlier that there are discovery
15 requests directed to Three Arrows, Inc. or to Autohaus, Inc.
16 And I'm -- I'll tell you, sir, I'm not seeing that.

17 MR. HINCHMAN: No, that --

18 THE COURT: I'm not seeing that at first blush.

19 MR. HINCHMAN: I agree, Your Honor. And what --
20 what --

21 THE COURT: What was your point earlier?

22 MR. HINCHMAN: My point earlier, Your Honor, is that
23 the central argument, the central set of facts, and the central
24 dispute in all of the counts is the alleged negligence of
25 Susquehanna in administering the floor plan loans, the floor

1 plan loans that were entered into with the debtor. And that
2 the counts that are in the complaint are just derivative of a
3 finding of negligence on the administration of the floor plan
4 loans so that the discovery request illustrate the fact that
5 the real gravamen of all of the allegations that have been made
6 center back to the floor plan loans, which are the loans
7 entered into between the debtor and the bank. That was my
8 point, Your Honor, is that they illustrate the connection and
9 the dependence upon these causes of action with that
10 relationship.

11 THE COURT: I understand your position. And there
12 was a third point, Mr. Hinchman?

13 MR. HINCHMAN: The third point, Your Honor, was only
14 that I think Mr. Braverman made the representation that they've
15 moved to open and/or strike the confess judgments. My --

16 MR. BRAVERMAN: I said we're doing that.

17 MR. HINCHMAN: Well, I just wanted to be clear about
18 that.

19 MR. BRAVERMAN: Exactly when will we --

20 MR. HINCHMAN: Because I believe the 30 days has
21 expired to do it, but I just wanted everyone to be clear that
22 as of today, that has not occurred.

23 MR. BRAVERMAN: Then I suppose you'll tell the courts
24 that you have filed those confess judgments that somehow I'm
25 untimely.

1 THE COURT: And just as a housekeeping matter, I'm
2 going to overrule the objection to the Susquehanna 3 and admit
3 it into evidence.

4 MR. BRAVERMAN: Yes, sir. If I can comment just for
5 a second on that.

6 THE COURT: Yes, sure. I think we're nearing
7 conclusion here, but --

8 MR. BRAVERMAN: Yes, sir. Yes, sir. And I'm
9 probably unwise for even saying this. But the request for
10 production of documents says on the front page that it is a
11 "Request for production of documents upon defendant,
12 Susquehanna Bank."

13 And it goes further to say that, "The bank is
14 required to produce for copying or inspection all of the
15 respective documents."

16 You go then, Your Honor, to Page 2, which has the
17 definitions. And starting on Page 5 -- I'm sorry -- Paragraph
18 5, it identifies a series of loans through Number 11.

19 With one exception, each and every one of those
20 relates to a loan directly made to nondebtor parties, the
21 Reinhart parties.

22 The loans are defined collectively in Paragraph 12.
23 And then if Your Honor sees, the first 14 requests for
24 production of documents relate to the other loans.

25 And then, of course, 15, 16, whatever, relate to the

1 loans to Autohaus.

2 But the fact of the matter is is that there was a
3 cross default provision, the bank relied upon that cross
4 default provision in asserting claims against my client. My
5 clients have brought the action, it's independent of the
6 debtor. The debtor is represented by a trustee, more than
7 competent, knows exactly what to do and how to do it.

8 And with all due respect, it would be in violation of
9 my client's due process rights to enjoin the State Court action
10 from proceeding.

11 That's all I have to say, Your Honor. Thank you very
12 much for your time and I apologize if I was overly exuberant.

13 THE COURT: Nothing to apologize for.

14 MR. HINCHMAN: I have nothing else, Your Honor.

15 THE COURT: Okay.

16 (Pause)

17 THE COURT: So, I consider this morning the motion of
18 Susquehanna Bank to impose the automatic stay with respect to a
19 pending State Court action which is pending in the Court of
20 Common Pleas of Delaware County, I think I -- I think it's
21 clear from the record that it is a four-count complaint. I'm
22 not going to repeat the characterization I gave of the cause of
23 action. I think they included negligence -- gross negligence,
24 breach of fiduciary duty and deepening insolvency.

25 I did review the State Court complaint. I have very

1 quickly, candidly, perused the attachments, which have been --
2 are part of Susquehanna Bank Exhibit 1. I did look briefly at
3 the answer and new matter, as well as the plaintiff's discovery
4 request.

5 I note that the caption of the Delaware County action
6 does not include either Three Arrows, Inc. or Autohaus, Inc. as
7 a named party, either plaintiff or defendant.

8 In my dialogue with Mr. Hinchman, I questioned
9 whether this is really a case where the automatic stay would
10 have stopped an action against Susquehanna Bank in the first
11 place. To me, when you read 362(a) of the Bankruptcy Code --
12 which, of course, I've managed to bury -- 362(a)(1) says that
13 the automatic stay operates as a stay applicable to all
14 entities of the commencement or continuation, including the
15 issuance or employment of process of a judicial, administrative
16 or other action or proceeding against the debtor that was, or
17 could have been, commenced before the commencement of the case
18 under this title, or to recover a claim against the debtor that
19 arose before the commencement of the case under this title."

20 And I try not to put my inflection on -- against the
21 debtor, which is mentioned twice in that subsection.

22 But I believe that the case law is clear that actions
23 -- I fan action was brought by a debtor during the pendency of
24 the case, and we see this quite often, even in a simple
25 consumer case. The debtor has a prepetition cause of action.

1 A personal injury claim, a lender liability claim, whatever it
2 is. The debtor goes ahead and -- maybe if there's a trustee
3 involved, it's the trustee. But they're able to prosecute
4 their cause of action.

5 So, I guess I -- initially I do not find that there
6 was any automatic stay that prohibited the Delaware County
7 action.

8 So, then I say, well, there must be some other way to
9 characterize the relief that Susquehanna Bank is requesting.
10 And I view it as injunctive relief. We obviously have a
11 pending State Court action that's a -- it's a moving status
12 quote, but it is a status quo. And as Mr. Braverman correctly
13 indicated, there are some notions of federalism and due
14 deference to a state forum that I think have to be concerned.
15 Let me not get ahead of myself.

16 An injunctive proceeding generally under Federal
17 Bankruptcy Rule 7017 should be brought as an adversary
18 proceeding by a complaint and summons. And in the Eastern
19 District, the Bankruptcy Court in In Re: Williams, 346 B.R.
20 361, a Judge Fox decision, 2006 so held. I guess I could say,
21 well, it wasn't raised, the fact that this was brought as a
22 motion, rather than an adversary wasn't raised. So, maybe it's
23 waived.

24 I am a judge that is -- tries to be protective of all
25 parties' due process rights. I think if we're not charged to

1 do that, I wonder what am I charged to do.

2 And particularly when it's injunctive relief, there
3 are so many concerns that you may not have actual service, and
4 you're talking about possibly subjecting someone to contempt of
5 court for violating an order.

6 So, I think we definitely want to make sure we have
7 all the T's crossed as far as every formality, and service, and
8 making sure that the parties have an opportunity to appear.

9 In this case, I think the Reinharts are well
10 represented. The Reinhart groups are well represented this
11 morning.

12 So, I guess at the end of the day, I will look beyond
13 -- I will look to the substance of the relief requested.

14 I characterize it as a request for injunctive relief.
15 And I often look at an order case, the Wedgewood Realty Group,
16 which is reported at 878 F. 2d 693, Third Circuit, a case in
17 1989. And Judge Rosenn -- and it was a case where there was an
18 automatic stay in place, garden variety mortgage foreclosure
19 action, as I recall. The stay lapsed because they didn't have
20 the hearing within the 30 days. And then the debtor sought to
21 reimpose the automatic stay.

22 And Wedgewood says that really it is a request for
23 injunctive relief. And the general standards are the movant
24 has the burden of demonstrating a substantial likelihood of
25 success on the merits, irreparable harm to the movant, the harm

1 to the movant outweighs the harm to the nonmovant. And that
2 injunctive relief would not violate public interest.

3 On those standards, I am denying the motion of
4 Susquehanna Bank, which I treat as a motion for injunctive
5 relief.

6 I cannot find that there's a substantial likelihood
7 of success on the merits.

8 Also, I suppose I could treat the relative harm to
9 the parties -- I don't even know if I can treat that as
10 neutral, frankly. It seems to me the harm to the Reinharts,
11 that they have what appears to be a -- they have a pending
12 State Court action. And they have -- I still think one has
13 rights to proceed with what, at least at the preliminary
14 objection stage, the Delaware County court said is a valid
15 cause of action. Now, I don't want to go any further than
16 that.

17 Also, I do think that it may not be -- Factor 4, it
18 may not be effect on the public interest in the sense of
19 enjoining a First Amendment activity or common things, but I
20 think for me to effectively enjoin a State Court proceeding
21 does have some -- at least tangential effect on the public
22 interest.

23 So, I will enter an order consistent with this --
24 these ramblings which I'll treat as my findings and conclusions
25 pursuant to Federal Bankruptcy Rule 7052, and I will deny the

1 motion to reimpose the automatic stay.

2 MR. BRAVERMAN: Thank you, Your Honor.

3 MR. HINCHMAN: Thank you, Your Honor.

4 THE COURT: I appreciated your arguments this
5 morning, gentlemen.

6 MR. HINCHMAN: Thank you.

7 (Whereupon, at 11:33 A.M., the hearing was adjourned.)

8 CERTIFICATE

9
10 I certify that the foregoing is a correct transcript from
11 the electronic sound recording of the proceedings in the
12 above-entitled matter.

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14
15 /s/ Karen Hartmann AAERT CET**D0475 Date: July 28, 2010
16 TRANSCRIPTS PLUS, INC.

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